Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEB - 8 1995

In the Matter of	)	
	)	
Policies and Rules Concerning	)	CC Docket No. 94-129
Unauthorized Changes of Consumers'	)	
Long Distance Carriers	)	
	)	

REPLY COMMENTS OF

LDDS COMMUNICATIONS, INC.

Catherine R. Sloan, Esq.
Richard L. Fruchterman, III, Esq.
LDDS Communications, Inc.
1825 Eye Street, N.W.
Suite 400
Washington, D.C. 20006
202/429-3035

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SUMMARY

LDDS Communications, Inc. ("LDDS") continues to share the Commission's concern over the rising number of consumer complaints stemming from unauthorized conversion of long distance carriers and other difficulties encountered by consumers in changing long distance carriers. Competition in the long distance industry will be enhanced if consumer confusion is reduced and misleading marketing tactics are prevented.

LDDS supports the Commission's proposal to prescribe specific language for letters of authorization ("LOAs"). LDDS also believes that an LOA should only be used to demonstrate a consumers intent to change to the designated long distance carrier although, if specific LOA language is prescribed, an LOA can be packaged in the same envelope with inducement material. Consumer confusion will be reduced if only the name of the billing interexchange carrier is included on the LOA. Additional consumer confusion can be avoided if local exchange carriers are required to show the name of resale carriers, rather than underlying carriers, on the consumer's LEC bill and to have that information available at their business offices.

Consumers who experience an unauthorized conversion should be liable for calls placed on the unauthorized carrier but only at rates charged by the original carrier. To absolve consumers of all liability for calls placed on unauthorized carriers creates incentives for some consumers to repeatedly change carriers and dispute charges. Because unauthorized changes of interexchange carriers often occurs for many reasons aside from malfeasance on the part of the carrier, LDDS does not support the imposition of a penalty on interexchange carriers for unauthorized conversions. In addition, underlying carriers should not be held responsible for unauthorized conversions made by their reseller carrier customers. The Commission's resale

policies and the underlying carriers' position as resale competitors of the resellers precludes the underlying carriers from policing the activity of their resale customers. LDDS is, of course, willing to provide the Commission and state regulatory agencies with and information they require regarding its resale customers and to assist in taking any corrective action that may be necessary.

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LDDS Communications, Inc. ("LDDS") respectfully submits these reply comments in response to the comments filed by other parties regarding the above-captioned Notice of Proposed Rulemaking ("NPRM").

I. INTRODUCTION

As noted in LDDS's initial comments, LDDS is the nation's fourth largest long distance company. LDDS operates both as a retailer of interexchange services to business and residential end users and as a wholesaler of such services to other long distance carriers. Having witnessed the growth of the interexchange industry from these varied vantage points, LDDS continues to share the Commission's concern over the rising number of consumer complaints stemming from unauthorized conversion of long distance carriers and other difficulties encountered by consumers in changing long distance carriers. By taking appropriate steps in this proceeding to reduce consumer confusion, prevent misleading marketing tactics and ease some of the complexities involved in changing long distance carriers, the Commission will create a better atmosphere in which legitimate interexchange carriers can better compete on the basis of price, quality and service.

II. RULES MUST BE CONSISTENTLY APPLIED ON A NATIONWIDE BASIS

The comments filed thus far in this proceeding indicate a strong industry consensus that the rules the Commission adopts in this proceeding should be applied uniformly nationwide. To promote universal, consistent application of the regulations governing Letters of Authorization ("LOAs"), several parties go as far as urging the Commission to preempt state rules and regulations that may conflict with the federal rules adopted here.[1] These parties note that at least two states, Florida and South Carolina, are currently reviewing their own rules concerning LOAs and that other states are contemplating similar proceedings.

If states are permitted to adopt their own rules to regulate the form and content of LOAs, LDDS and long distance carriers are concerned that it would be impossible to design nationwide marketing plans that meet requirements that vary widely among the various states and the federal government. Such a situation will make it more difficult and expensive for carriers to seek new customers, thus diminishing the intensity of competition in the market. More critically, rules that vary from state to state and differ between a state and the Commission can only lead to more, not less, consumer confusion -- the very sort of confusion that the Commission seeks to alleviate through this proceeding.

LDDS respects the concerns raised by interested state commissions and understands that the state commissions have often borne the brunt of consumer complaints. For that reason, LDDS continues to urge that the views of the states be taken into account, either through their comments in this proceeding or by the convening of a Federal-State Joint Board to address this

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[1]See Comments of the Competitive Telecommunications Association ("CompTel"), p. 10; Comments of the America's Carriers Telecommunications Association ("ACTA"), p. 11; and Comments of Sprint Communications Co. ("Sprint"), p. 4.

issue. The outcome, however, of either this proceeding or the recommended Joint Board should be a single set of rules to govern LOAs on a nationwide basis.

III. THE COMMISSION SHOULD PRESCRIBE SPECIFIC LANGUAGE FOR LOAs AND RESTRICT THE USE OF AN LOA TO DEMONSTRATING A CUSTOMER'S INTENT TO CHANGE TO THE DESIGNATED LONG DISTANCE CARRIER

A. THE COMMISSION SHOULD PRESCRIBE SPECIFIC LANGUAGE FOR LOAs

LDDS believes that much consumer confusion could be eliminated and many of the states' concerns could be lessened, if the Commission would use this proceeding to prescribe specific language to be used by interexchange carriers on their LOAs. At minimum, this measure would remove any dispute as what constitutes an LOA. As it stands today, there are some six hundred interexchange carriers operating in the United States. These carriers have varying familiarity with the Commission's rules and all possess their own interpretation of what qualifies as an LOA. In addition, marketplace pressures may force some of the less scrupulous carriers to cut corners on the wording of an LOA. LDDS concurs with the comments of those parties that endorse the Commission's proposal to require specific language for LOAs.[2]

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[2]See ACTA at 7; Sprint at 3; Comments of the National Association of Attorneys General Telecommunications Subcommittee and the Attorneys General of the States of Arizona, Arkansas, California, Connecticut, Florida, Illinois, Indiana, Iowa, Kansas, Maryland, Massachusetts, Minnesota, Nevada, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, West Virginia and Wisconsin ("Attorneys General") at 5; and the Joint Comments of the Missouri Office of the Attorney General, the Missouri Public Service Commission and the Missouri Office of the Public Counsel ("Missouri") at 3. In order to avoid over complicating carriers' marketing activities, the Commission should ensure that the language it requires will fit on a 3 x 5 postcard.

B. THE COMMISSION SHOULD RESTRICT THE USE OF AN LOA TO DEMONSTRATING A CUSTOMER'S INTENT TO CHANGE TO THE DESIGNATED LONG DISTANCE CARRIER

A letter of authorization to change long distance carriers should be used for that purpose and only that purpose. An LOA that is used in conjunction with inducements only creates the potential for misuse which in turn will lead to consumer confusion and complaints.

LDDS, in general, supports the Commission's proposal to require that LOAs be physically separate documents from inducements. However, LDDS does concur with Sprint and Allnet that LOAs should be permitted to contain language directly related to the changing of long distance carriers, even if that language could otherwise be interpreted to be an inducement.[3] For example, if a carrier is willing to credit its customer for the local exchange carrier's ("LEC") fee to change Primary Interexchange Carriers ("PIC"), the carrier should be able to incorporate language describing such a credit into its LOA. To prevent abuse, the exception for such language should be tightly drawn and limited to the PIC change fee.

Although LDDS agrees with the Commission's proposed requirement that LOAs be physically separate documents from inducements, LDDS does not believe that carriers should be prohibited from including LOAs in the same envelope with inducements -- particularly if the Commission has prescribed the language that must be used on a LOA. It should be noted that the Attorneys General, Missouri, and Consumer Action agree that consumer confusion will be minimized if the Commission specifies the language to be used in the LOA and that, if the

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[3]See Sprint at 5; Comments on Notice of Proposed Rulemaking, ALLNET Communications Services, Inc. ("ALLNET") at 7.

Commission does specify such language, use of the same envelope for both an LOA and an inducement should not be a problem.[4]

C. AN LOA SHOULD ONLY DESIGNATE ONE INTEREXCHANGE CARRIER -- THE BILLING INTEREXCHANGE CARRIER

Almost all parties agree that an LOA should designate only one interexchange carrier -- the billing carrier or the rate setting carrier. LDDS, with its wide experience in both the wholesale "carrier's carrier" market and the retail market, knows that it just does not make any sense to require -- or even to permit -- more than one carrier to be designated on an LOA. Most interexchange carriers operating in the market today own very little in the way of long distance facilities. Some of these carriers lease capacity in the form of DS1s and DS3s from other long distance carriers and use that capacity to connect their switches. These resale carriers are very likely to lease capacity from several "underlying" interexchange carriers and their leasing relationships are likely to vary geographically and to change frequently -- after all, the carrier marketplace is one of the industry's most competitive. For these resale carriers to even try to explain their relationships with the variety of underlying carriers who serve them would be a daunting task; to reduce these relationships to a description that fits neatly on an LOA would be nearly impossible and could only lead to greater consumer confusion.

Another form of resale is performed by the "switchless" reseller. Rather than purchasing network capacity as described above, a switchless reseller purchases minutes on the underlying carrier's network. The switchless reseller then sells those minutes to the end user and later

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[4]See Attorneys General at 11; Missouri at 4; and Opening Comments of Consumer Action ("CA") at 2.

receives a billing tape from the underlying carrier to bill the end user. Although most, if not all, of a switchless reseller's minutes may be purchased from one underlying carrier, there is substantial competition for a switchless reseller's minutes and the switchless reseller may change underlying carriers if it can find a better price. If the LOA of a switchless reseller designates its underlying carrier, it may make it more difficult for the switchless reseller to change underlying carriers at a later date without obtaining new LOAs from its customers and thereby creating a great deal of consumer confusion. A Commission requirement that a switchless reseller designate its underlying carrier may in fact restrain competition in the carrier market by making it more difficult for switchless resellers to change underlying carriers. Given the competitive check that this form of resale places on the larger carriers, the Commission should hesitate to take any action to limit this form of competition.

In its comments, Sprint raised an issue involving switchless resellers and the consumer confusion that is sometimes created by the way that LECs handle their PIC change requests.[5] Although not directly relating to LOAs and therefore perhaps beyond the scope of this proceeding, it is an area where the Commission could be of great service. The problem is that most switchless resellers, for economic or technical reasons, do not possess their own Carrier Identification Code ("CIC"). Instead of submitting PIC change requests directly to the LEC and associating their customers telephone numbers, or Automatic Number Identification ("ANI"), with their own CIC, most switchless resellers must submit their PIC change requests through their underlying interexchange carriers who in turn transmits the change requests to the LEC for

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[5]See Sprint at 8.

handling. The LEC then changes the customers' PICs by associating the customers' ANIs with the underlying carrier's CIC.

Consumer confusion arises when the LEC bills the PIC change charge and indicates that the customer has been changed to the underlying carrier -- a carrier with whom the customer has no direct relationship and of whom the customer may have no knowledge. Similarly, if the customer were to call a LEC business office to complain about an unauthorized PIC change, the LEC business office would direct the customer to the underlying carrier rather than to the true carrier involved. The customer would be left with the impression that the underlying carrier had caused the slam when the underlying carrier did nothing but convey the order from the reseller.

The solution proposed by Sprint is simple and should not require much effort on the part of the LECs or underlying carriers. When underlying carriers submit PIC change orders on behalf of switchless reseller, the underlying carriers will tell the LEC which reseller to associate with each batch of ANIs and provide the name, address, and telephone number of the reseller. When the LEC bills the PIC change charge to the end user, the LEC can include this information on the customer's bill. If a customer calls the LEC to complain about being changed or even with a question about its long distance carrier, the LEC business office can direct the customer to its true carrier without forcing the customer to take the intermediate step of contacting the underlying carrier. The Commission should consider ordering the LECs to associate PIC change requests with switchless resellers if submitted in that manner by the underlying carrier.

IV. CONSUMER COMPENSATION FOR UNAUTHORIZED PIC CHANGES SHOULD MAKE THE CONSUMER WHOLE BUT NOT IMPOSE A PENALTY

A. THE CONSUMER SHOULD BE MADE WHOLE FOR UNAUTHORIZED PIC CHANGES

LDDS strongly agrees with those parties that encourage the Commission to adopt a policy that ensures that an improperly converted consumer is made whole.[6] Such a policy would require the carrier, including possibly the LEC involved, responsible for the improper PIC change to pay all charges related to moving the consumer back to its original carrier and, upon receipt of a detailed written claim, to credit or repay any amount in excess of what the customer's original carrier would have charged for the same service. To avoid abuse of this process, LDDS recommends that refunds be limited to calls placed in the three months prior to the date the consumer makes its claim of improper conversion. Three months is sufficient time for the consumer to discover that its long distance carrier has been changed and the time limit will protect carriers from illegitimate claims of wrongful PIC conversion.

Several parties suggested that consumers should not be liable for any charges incurred by using an improperly authorized PIC;[7] LDDS strongly disagrees. The industry processes tens of millions of PIC changes every year, most of them without complaint or dispute. Those few that do result in dispute, do so for a variety of reasons, many of which may not be the fault of an interexchange carrier. Customer change of mind, customer lack of authority, customer clerical error (particularly by business customers with multiple ANIs), data entry error, and even

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[6]See Attorneys General at 9; Comments of MCI ("MCI") at 15; Comments of the Telecommunications Resellers Association ("TRA") at 14.

[7]See Missouri at 5; Comments of the New York State Public Service Commission at 5; and CA at 3.

LEC error are just a few of the causes of unauthorized conversions which may be beyond the control of the interexchange carrier. To uniformly absolve the consumer of any liability to a carrier that lacks proper authority -- possibly through no fault of its own -- creates the wrong incentives in the marketplace. Such an approach would motivate some consumers to jump from carrier to carrier, disputing charges at every turn. Moreover, the requirement that the improper carrier pay the cost of returning the consumer to its original carrier should be more than sufficient to deter carriers from wilful misconduct.

B. INTEREXCHANGE CARRIERS SHOULD NOT BE PENALIZED FOR UNAUTHORIZED PIC CHANGES

Several parties filed comments suggesting that long distance carriers be penalized for unauthorized PIC changes. Pacific Bell, for example, urges an elaborate scheme of reports that will result in a monetary penalty for interexchange carriers whose complaints of unauthorized changes exceed 2% of carrier-initiated changes.[8] LDDS does not support the imposition of a penalty on interexchange carriers for unauthorized PIC changes. As noted above, unauthorized changes occur for many reasons aside from malfeasance on the part of the interexchange carrier. Without a thorough examination of each individual instance, no true fault can be assigned and no penalty should be assessed.

C. UNDERLYING CARRIERS SHOULD NOT BE HELD RESPONSIBLE FOR UNAUTHORIZED CONVERSIONS OF THEIR RESELLER CUSTOMERS

LDDS is also concerned that the wrong party -- the underlying carrier -- may be held responsible for unauthorized PIC changes of some classes of resellers. As noted above,

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[8]See Comments of Pacific Bell and Nevada Bell at 2. See also, Comments of the People of the State of California and Public Utilities Commission of the State of California on the Notice of Proposed Rulemaking at 4.

underlying carriers often submit PIC changes to LECs or make changes within their own data systems on behalf of switchless resellers who lack their own CIC. Under the penalty system proposed by Pacific Bell, it is the underlying carriers who would be reported to the Commission and who would penalized, not for their own misconduct, but for the misconduct of a reseller customer. Similarly, Florida has suggested that the Commission should "consider whether the underlying facilities-based carrier should bear some responsibility when none of the conditions required to implement a PIC change has been met."[9]

These approaches fail to appreciate the difficult position of the underlying carrier. First, the Commission's long standing policy of unrestricted resale, most recently restated in a forfeiture proceeding against AT&T,[10] makes it difficult for an underlying carrier to deny service to a reseller. Moreover, the underlying carrier is also a retail competitor of the reseller -- service denial by the underlying carrier would give rise to a raft of complaints about anticompetitive behavior. In their contracts with LDDS, reseller customers agree to comply with all laws and regulations -- it is for the Commission and the state to determine whether those resellers have done so.

The underlying carrier is in much the same position as a LEC regarding PIC changes and LOAs. A LEC accepts PIC changes without seeing an LOA and only demands an LOA when the customer claims the change is unauthorized. The underlying carrier accepts PIC changes from the reseller and conveys them to the LEC without seeing an LOA and only demands an LOA when a customer claims the change is unauthorized. Just as the LEC cannot prejudge when a change is properly authorized, neither can an underlying carrier.

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[9]Florida at 3.

[10]See Notice of Apparent Liability for Forfeiture and Order to Show Cause, In re AT&T Communications, FCC 94-359 (rel. Jan. 4, 1995).

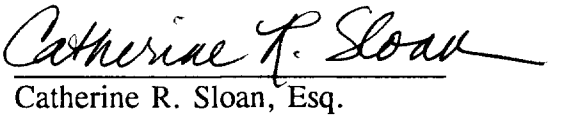
LDDS understands that it does have responsibilities as a common carrier. If there are complaints of unauthorized conversions made by its reseller customers, LDDS is willing -- as it has done in the past -- to work with the Commission and various state commissions, including Florida, to identify the carriers involved and will assist the appropriate regulatory authorities by taking any corrective action that is necessary. It is the Commission and the state commissions, however, that have the responsibility to police the retail carriers within their jurisdictions. It is simply not a role in which underlying carriers can or should be placed.

V. CONCLUSION

LDDS believes that by taking appropriate measures in this proceeding such as specifying LOA language and separating LOAs from inducements, the Commission eliminate much of the consumer confusion that exists in the marketplace today and thus lessen the number of consumer complaints that must be handled by the Commission, by state commissions, and by industry. In addition, by adopting Sprint's suggestion that LECs maintain their records in a manner that identifies a customers true long distance carrier and not just the underlying carrier, consumers will be spared additional confusion and regulatory agencies will be able to resolve complaints more efficiently.

Respectively submitted,

February 8, 1995



Catherine R. Sloan, Esq.
Richard L. Fruchterman, III, Esq.
LDDS Communications, Inc.
1825 Eye Street, N.W.
Suite 400
Washington, D.C. 20006
202/429-3035

CERTIFICATE OF SERVICE

I, Cecelia Y. Johnson, hereby certify that on this 8th day of January, 1995, true copies of the foregoing "REPLY COMMENTS OF LDDS COMMUNICATIONS, INC." were hand delivered to each of the parties listed below.

Cecelia Y. Johnson

William F. Caton
Acting Secretary
Federal Communications Commission
Room 220
1919 M Street, N.W.
Washington, D.C. 20554
(five copies)

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Enforcement Division
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Federal Communications Commission
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